

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

KERRI A ANDERSON
Claimant

APPEAL NO. 09A-UI-18193-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**Original Claim: 11/01/09
Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Casey's Marketing Company filed a timely appeal from a representative's decision dated November 24, 2009, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on January 13, 2010. The claimant participated personally. Participating as a witness for the claimant was Alison Gates, former manager. The employer participated by Cheri Svetska, area supervisor.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Kerri Anderson was employed by Casey's Marketing Company from October 4, 2006, until October 30, 2009, when she was discharged from employment. Ms. Anderson last held the position of full-time store manager and was paid by salary. Her immediate supervisor was Cheri Svetska.

The claimant was discharged after a company employee complained that the claimant was falsifying her work hours by having hourly employees clock in and out for her. Prior to discharging the claimant, the company's area manager, Ms. Svetska, personally reviewed company surveillance tapes and determined that on repeated occasions hourly employees had clocked Ms. Anderson in or out when the claimant was not at the employer's facility.

Company employees are informed at the time of hire that falsification of records can result in immediate termination from employment. The company uses an "off site" form for company employees to track and report time that is used for the benefit of the company during

non-working hours or when the services are being performed at a location other than the convenience store itself.

It is the claimant's position that she had hourly employees clock her in and out so that her time clock hours would reflect the hours that the claimant actually worked, including time that she spent in performing duties away from the facility itself. Although she was familiar with the "off site" form, the claimant maintains she did not know it could be used to report off site work.

At the time of discharge, Ms. Anderson did not dispute her discharge from employment nor indicate she was attempting to adjust her hours for off site work.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

Here, the evidence in the record establishes that the claimant received initial training as a manager for Casey's and was aware of her obligation to accurately report her working hours. As a salaried employee, the claimant was expected to work 95 hours in each two-week period, and the company had specifically provided a form for the use by company employees to report "off site" work.

The claimant was discharged after it was determined based upon an employee complaint and a review of video surveillance cameras that the claimant was, in fact, having other workers clock her in and out at times when she was not there. The claimant did not obtain permission from her immediate supervisor nor indicate to her supervisor that she was using that method to balance hours that she claimed that she had performed work for the company off site. Based upon the evidence that the claimant had claimed working time when she was not present and had not utilized a form specifically designed for that purpose, the claimant was discharged from employment.

Although cognizant that Ms. Anderson maintains she could not use the "off site" form to report her own work, the administrative law judge concludes the claimant's testimony strains credibility. The claimant's repeated failure to accurately report her working hours showed a willful disregard of the employer's interests and standards of behavior and thus was disqualifying conduct under the provisions of the Iowa Employment Security Act. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of whether the claimant must repay the unemployment benefits she has received is remanded to the Unemployment Insurance Services Division for determination.

DECISION:

The representative's decision dated November 24, 2009, reference 01, is reversed. Kerri Anderson is disqualified and benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits she has received is remanded to the Unemployment Insurance Services Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw